IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5669 OF 2006

1. Bapu Maruti Rakshe
   Age 30 years, occupation :

2. Valmik Popat Khedekar
   Age 30 years, occupation :

3. Namdeo Popat Khedekar
   Age 30 years, occupation :

4. Dadaso Kondiba Dubey
   Age 36 years, occupation :

5. Arjun Dinkar Rakshe
   Age 55 years, occupation :
   All R/o Rakshewadi, Post
   Ranjangaon Sandas,
   Tal.Shirur, District Pune ....Petitioners

V/s.

1. State of Maharashtra

2. Shri Popatrao Gawade Vividh
   Karyakari Seva Sahakari
   Sanstha Maryadeet

3. Assistant Registrar,
   Co-operative Societies,
   Taluka Shirur, District Pune

4. K.B. Kohkade,
   Then Administrator,
   Bank Inspector
   Pune District Central Co-op.
   Bank, Nhavara Branch
   Nhavara, Tal.Shirur,
   District Pune ....Respondents

Mr.S.M. Gorwadkar for the Petitioners.

Mrs.M.P. Thakur, AGP for Respondent Nos.1 and 3.

Mr.P.S. Dani for the Intervenor.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 14TH MARCH, 2007.

ORAL JUDGMENT (PER : F.I. REBELLO, J.) :

1. Rule. Heard forthwith.

2. The Petitioners have approached this Court as the members of Respondent No.2 - a notified society. Pursuant to an enquiry conducted under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "M.C.S.Act".) an order came to be passed appointing an Administrator. That order was challenged in an Appeal which came to be dismissed on 17.2.2006. In the revision preferred, the Revisional Authority, on 15.7.2006 stayed the order dated 25.7.2005 and consequently the Managing Committee had taken back the charge.

3. The Administrator during his term in office had prepared a draft voters list and submitted it to the Assistant Registrar - Respondent No.3. According to the Petitioners while preparing the provisional voters list, the Administrator failed to include the names of the Petitioners and 36 other eligible members

of the society. The provisional voters list was not published and as such they had no opportunity to challenge the non-inclusion of their names in the provisional voters list. After the Managing Committee assumed charge, the aforesaid arbitrary omission of names of 41 members was noticed from the records of the society. Thereafter representations were made to Respondent No.2 for rectification of the provisional voters list. Respondent No.3 did not consider the same as according to the Petitioners, he was of the opinion that the objections were beyond the prescribed period of 15 days. On account of failure by Respondent No.3, the Petitioners have moved this Court.

4. The submission of the Petitioners is, that the provisional voters list has to be published in terms of Rule 56(B) of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "the Rules"). That Rule requires that an authenticated provisional list of voters has to be displayed on the notice board of the society. The District Election Officer and the Registrar within 15 days of publication of the provisional list of voters must invite claims and objections from the members of the society. As the provisional voters list was not

displayed on the notice board, the Petitioners were not aware of the same and consequently could not file the objections, as required by Rule 56 (B) of the Rules. The Rule requires that the objection including as to omission of name has to be filed within 15 days from the date of publication of the provisional list of voters. After the objections filed are decided, the final voters list has to be displayed on the notice board of the Registrar and on the notice board of the office of the District Election Officer and of the society atleast seven days before the declaration of the election programme. It is the Petitioners submission that a fresh voters list has to be prepared in accordance with law by including the names of the Petitioners and other 36 eligible members of the society.

5. The original Respondents to the Petition were the society, Assistant Registrar and subsequently the Administrator also has been added as a Respondent. A reply was initially filed by Mr.Kundlik Bapurao Kokade, Administrator. In his affidavit, it is set out that the provisional list of voters was published on the notice board of the office of the Assistant Registrar, Co-operative Societies, Shirur and Village Panchayat of Ranjangaon Sandas (Rakshewadi), Taluka

Shirur, District Pune on 26.6.2006. The fact of publication of the provisional list of voters was brought to the notice of the members residing in the village by beat of drums and as such all the members of the society had knowledge about the publication of the provisional list of voters since 26.6.2006 itself. At this stage, it may be mentioned that the members of Respondent No.2 are from the said village. It is pointed out that the Assistant Registrar, Co-operative Societies, Shirur invited objections to the provisional list of voters from the date of publication till 10.7.2006. Mr.B.M. Kalbhor, Ex.Chairman of the society and Mr.Dnyandeo Shivram Rakshe had filed the objections to the provisional list of voters within the prescribed time limit and those have been dealt with by the Assistant Registrar.

. Affidavit in reply has also been filed by Sanjay Appasaheb Gade-Patil, Assistant Registrar, Co-operative Societies, Shirur. Apart from what has been set out in the affidavit of the Administrator, it is pointed out, that the Petitioners and 29 other members filed their objections on 10.8.2006 with a request to include the names of 41 persons in the voters list. The objections were filed after the stipulated period. The Petitioners were informed vide

letter dated 17.8.2006 that their names cannot be included for the aforesaid reason. The provisional voters list was finalized on 17.8.2006.

6. A Civil Application came to be taken out by two Applicants seeking to intervene and to be added as Respondents to the Writ Petition. It was the contention of the Applicants that the enquiry into the acts of mal-practices of the Managing Committee was done at their instance, pursuant to which an Administrator had came to be appointed. The Assistant Registrar by a communication dated 26.6.2006 had intimated to the society that the provisional list of voters was enclosed along with the communication and that communication along with the provisional list of voters should be published on the notice board of the society on 26.6.2006 and report should be submitted to the Assistant Registrar. The notice set out, if any members seek to raise any objections thereto, the objections should be raised on or before 10.7.2006. Respondent No.2 as well as the office of the Assistant Registrar published the provisional voters list on the notice board. Some objections were filed including by Mr.Bhimrao Mahadeo Kalbhor, the chair person. It is not necessary to advert to the other contentions of the affidavits.

7. A rejoinder was filed by Petitioner No.1. It is admitted that the objection dated 10.8.2006 had been rejected by Respondent No.3 as time barred. An affidavit also came to be filed by Mr.B.N. Kalbhor, chairperson of the society. In the affidavit, it is pointed out that he had filed the objections as some names were not properly included in the provisional voters list. It is then set out that the final voters list was received by the Secretary of Respondent No.2 society in the evening of 21.8.2006. In his affidavit, the affiant state that the provisional list of voters was never published. It may be pointed out that the communication of 26.6.2006 was addressed to the Chairman with a request to publish the provisional list of voters on the notice board of the society. The affidavit is dated 4.9.2006. The intervenor's application is dated 31.8.2006 to which the said notice has been annexed. Along with the said affidavit of the chairperson, several affidavits have been filed by members contending that they are eligible members of Respondent No.2 and that the provisional list of voters was not published on the notice board of the society on 26.6.2006. In none of the affidavits is there a denial that the notice was also published by beat of drums in the village.

Tanaji Bapurao Bhandlkar, Secretary has filed his affidavit, explaining that the Administrator deleted the names of 41 eligible persons, whose names are enlisted in I-Form of the society.

8. On behalf of the State - Respondents and the Applicants, it is contended that the Petition filed was not maintainable as the preparation and publication of the voters list is a stage in the election process and as such it was open to the Petitioners to file an Election Petition and in these circumstances this Court ought not to interfere in the exercise of its extra-ordinary jurisdiction. For this purpose reliance is placed on the judgment of the Supreme Court in *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others, (2001) 8 Supreme Court Cases 509*. The Supreme Court in that case considered the provisions pertaining to the specified co-operative societies. In the instant case, we are concerned with notified society. The Supreme Court noted that under Section 144-X of the M.C.S.Act, power had been conferred on the Government to make rules relating to various stages of the elections including preparation of list of voters. The Court also noted Rule 81 of the Election Rules to

specified societies which under ground (d)(iv), provided that an election could be declared void for any noncompliance with the provisions of the Act or any Rules made therein by filing an election petition. The Court held that the preparation of electoral roll is part of the election process and if there is any breach of rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the Tribunal. Relying upon the ratio of this judgment, the Respondents contend that this Court should not exercise its extra-ordinary jurisdiction and leave the Petitioners if aggrieved to file an Election Petition. The provisions pertaining to notified societies, it is submitted is similar to the provisions for specified societies.

. On behalf of the Petitioners, their learned counsel submits that the judgment in *Shri Sant Sadguru Swami (supra)*, has been considered by the Supreme Court in subsequent judgments. Reliance firstly is placed on the judgment in *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. and another v. State of Maharashtra and others, (2004) 1 Supreme Court Cases 133*. This again was a case of specified society. The issue was of inclusion of names in the voters list for election

to the Managing society, consequent to an amendment to the bye-laws being held to be illegal. In that context, considering the judgment in *Shri Sant Sadguru Swami (supra)*, the Supreme Court was pleased to observe as under :- "In Shri Sant Sadguru Swami, this Court made the aforementioned observations keeping in view the fact therein that the voters' list was prepared in terms of the extant rules but certain irregularities were committed therein, but where the voters' list has been prepared on the basis of non-existent rules the same would be illegal." It is submitted, that if the voters list is prepared by violating the rules, it is open to this Court to interfere. Reliance is next placed on the judgment of *Pundlik v. State of Maharashtra and others v. (2005) 7 Supreme Court cases 181*. In this case, once again *Shri Sant Sadguru Swami (supra)* was considered. The issue was of a delegate representing the society. A contention was raised on the maintainability of the Petition relying on the judgment of *Shri Sant Sadguru Swami (supra)*. The High Court was pleased to dismiss the Petition. The Supreme Court noted that in several decisions, the Supreme Court has consistently taken a view that preparation of the electoral roll is an intermediate and integral process of election and it cannot be interfered with at that stage. The

contention that the Petition should not be entertained was rejected, by holding that "we are unable to uphold the contention." The Court noted that normally the High Court would not interfere in exercise of its powers under Article 226 of the Constitution at the stage of preparation of the list of voters, but such action must be in accordance with law. The Court noted that in Shri Sant Sadguru Swami (supra) the election process was already in motion and prayer of the Petitioner was for quashing of the Schedule for holding election. Next reliance is placed on a judgment in *Dudhganga Vikas Seva Sanstha Maryadit v. District Collector, Kolhapur and others, (2006) 5 Supreme Court Cases 250.* The challenge to noninclusion in the voters list was rejected by the Collector as well as by the High Court on the interpretation of the provisions of the Act and Rules. The Apex Court however held that to be not a correct reading of the Act and the Rules and the Appellant was held eligible to have its name included in the provisional list of voters and accordingly allowed the Appeal. Lastly, reliance was placed in the judgment of *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel and others, (2006) 8 Supreme Court Cases 200*. The issue there was the election of the post of President and Vice President. In the election held,

there was a tie. Pursuant to draw of lots, the Respondent was declared elected, which was challenged before the Gujarat High Court. The Gujarat High Court noted that two voters supporting the Appellant were arrested just before the election and not allowed to cast their votes. Considering the affidavit filed by those two voters, the election of the Appellant was set aside and the Respondent was declared as elected. In the challenge before the Supreme Court, the Supreme Court did not interfere with setting aside of the election but interfered with the declaration declaring the Respondent as elected on the ground that it was not open in the exercise of judicial review to have declared the Respondent as elected.

. On a consideration of these judgments, it is obvious that the judgment in *Shri Sant Sadguru Swami (supra)* has been explained subsequently and it is still open to the Court in the exercise of its extra-ordinary jurisdiction, on facts of a case to interfere even at the stage of preparation of provisional voters list. Provided this list was prepared based on non-existing rules or rules that were illegal or wrongly interpreted or by violating the rules, but in case of irregularities the Court will not interfere, if an election petition is

maintainable on that ground.

9. We may however note, as pointed out earlier, that the judgment in Shri Sant Sadguru Swami (supra), proceeded on the footing that the preparation of the voters list was a 'stage in the election process' considering Section 144-X of the MCS Act which is applicable to specified societies and under Rule 81(d)(iv) of the Specified Societies Rules and as an election petition was maintainable. In so far as the notified societies are concerned, the election to the societies are covered by Section 73(IC). The preparation of the voters list is under Rule 56(B) read with Rule 56(D). After the voters list is prepared, under Rule 56(J), the programme at various stages for election is provided for. Section 144-X has made the preparation of the voters list for specified societies as a stage of the election process. The preparation of the voters list for specified societies is by Rule 5 of the Specified Societies Rules and Rule 7 deals with final list of voters. Rule 6 provides for the schedule for election from the date of nomination to declaration of the results. It would be clear therefore that in the case of specified societies, in view of Section 144-X the preparation of the voters list, is treated as a stage

in the election process. There is no such provision in so far as the notified societies are concerned and challenge to an election is under Section 91 of the MCS Act. Thus it would be open to hold, that in the case of notified society, it would still be open to the writ Court to interfere in the preparation of the voters list, if it is prepared contrary to the provisions of the Act and Rules.

10. Having said so, the question is whether we on the facts of this case ought to interfere in the exercise of our extra-ordinary jurisdiction. The only basis on which the Petition was filed, is that the provisional list was not published as required in terms of Rule 56(B). It is now settled, that in the matter of defect of procedure, a person approaching this Court must make out a case that by not following the procedure, he has been severally prejudiced. The entire case of the Petitioners is that they were not aware of publication of the provisional voters list and came to know only after the final voters list was published. This is belighted by the fact that the Petitioners and 29 other persons filed the objections on 10.8.2006. The voters list was finalized on 17.8.2006. In other words, the Petitioners and others were fully aware much before 17.8.2006 that the

provisional voters list has been published. The Petitioners have not explained how they came to know of the provisional voters list. Secondly, the Chairman has filed an affidavit contending that the voters list was not published. In the affidavit filed by the office of the Registrar, it is pointed out that the Chairman had filed his objection within time. The Chairman was thus aware of the publication of the provisional list. The Chairman has not disclosed the source of how he came to know of the publication of the provisional voters list. The reasonable inference will be that the provisional voters list which was received by him. Thirdly, the intervenors have annexed a copy of the communication dated 26.6.2006 addressed to the Chairman, asking him to publish the provisional voters list on the society's notice board. If there has been failure thereof, it is by the Chairman who is now espousing the case of the Petitioners and other members that their names should be included in the provisional voters list. The Administrator has filed an affidavit setting out that the voters list apart from being published in two places, intimation was given to the villagers by beat of drums, which has not been denied. In our opinion, the Petitioners therefore have not made out a case for the Court to interfere in the exercise of

extra-ordinary jurisdiction. We may also note that the Supreme Court in *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra)* had distinguished *Shri Sant Sadguru Swami (supra)*, by holding that the Court would interfere if the voters list was prepared on the basis of non-existent rules and not in a case where irregularities have been committed. In the instant case the highest therefore, if there was failure to publish the voters list, it would be an irregularity.

. For all the aforesaid reasons, in our opinion, this would not be a fit case for us to exercise our extra-ordinary jurisdiction.

11. In the light of the above, the Rule is discharged. There shall be no order as to costs. All interim orders shall stand vacated.

. At this stage, the learned counsel for the Petitioners seek continuation of the ad-interim order. In our opinion, this would not be a fit case to continue ad-interim orders and consequently the prayer for continuation is rejected.

(R.M. SAVANT, J.) (F.I.REBELLO, J.)

IN THE HIGH COURT OF JUDICATURE AT BOBBY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5669 OF 2006

DATE OF DECISION : 14TH MARCH, 2007.

For Approval and Signature :

HON'BLE MR.JUSTICE F.I. REBELLO.

HON'BLE MR.JUSTICE R.M. SAVANT.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?)

2. To be referred to be Reporter or not ?)

3. Whether Their Lordships wish to see the fair copy of the judgement ?)

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?)

5. Whether it is to be circulated to the Civil Judges ?)

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices ?)